IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 355

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

BERL B. ZOOK and WILMER K. CRAIG,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents respectfully present this brief in opposition to the Petition of the People of the State of California for a Writ of Certiorari directed to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, to review the judgment of that Court rendered in the case entitled, "The People of the State of California vs. Berl B. Zook and Wilmer K. Craig," being case No. CR A 2380 in the records of said Court.

Reference to Opinion of the Court Below.

The said opinion of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, involved in the instant case will be printed in the permanent official California Appellate Reports and will be cited as.....Cal. App. 2d Supp..... The permanent volume of said reports has not yet been printed and for that reason the volume and page number cannot be furnished by respondents. The decision has been printed in 87 Advance California Appellate Reports Supp. at page 780. The opinion has been printed in the record filed with this Court. [R. 19.]

Grounds of Jurisdiction.

Respondents agree that Petitioner has correctly stated the basis of the jurisdiction of this Court at page 29 of its petition and brief.

Statement of the Case.

Respondents agree with the accuracy of the statement of the case made by Petitioner at pages 29 to 33 of its brief, but disagree with Petitioner's statement of the question involved in this case.

Respondents submit that the question simply is:

May the State of California punish a person for an act which is prohibited by Federal Statute enacted under the Commerce Clause of the United States Constitution and punishable under such statute where Congress by legislation has occupied fully the field of activity concerned?

History of Legislation Involved.

Petitioner under this point at page 33 *et seq.* of its brief fairly sets forth the history of the legislation involved, save that it argumentatively and incorrectly states the effect of Section 654.1 of the California Penal Code. This statute is correctly set forth verbatim in the appendix to its petition following page 22 of its petition and brief.

The net effect of Section 654.1 of the California Penal Code is to punish criminally one who sells transportation by a casual carrier not holding a Certificate of Public Convenience and Necessity or a contract carrier's permit from the Interstate Commerce Commission, an act punishable in the Federal Courts under Federal Statute enacted pursuant to the authority conferred upon the Congress by the Commerce Clause of the United States Constitution.

Summary of Argument.

I. THE FEDERAL QUESTION IS NOT SUBSTANTIAL.

II. CONGRESS HAS FULLY OCCUPIED THE FIELD HERE IN QUESTION BY A SCHEME OF COMPREHENSIVE REGULATION, INCLUDING PENALTIES FOR THE VIOLATION THEREOF, AND NO ROOM REMAINS FOR STATE ACTION BY WAY OF PUNISHMENT OR OTHERWISE IN THE PREMISES.

III. THE AUTHORITIES CITED BY PETITIONER DO NOT SUPPORT ITS POSITION.

IV. CONCLUSION.

ARGUMENT.

I.

The Federal Question Is Not Substantial.

Petitioner's essential argument in support of its assertion that the Federal question is substantial is that the question presented is novel. Respondents believe that it is well settled, on the contrary, that where the Congress has fully occupied a particular field of interstate commerce by appropriate legislation, no place remains for the effective enactment of State legislation on the subject.

Missouri Pacific v. Porter, 273 U. S. 341, 346;

Charleston & Carolina Railway v. Varnville Furniture Co., 237 U. S. 597, 604;

Southern Railway Company v. Railroad Commission, 236 U. S. 439, 448.

The foregoing principle will be more completely discussed in the argument under the following point.

II.

Congress Has Fully Occupied the Field Here in Question by a Scheme of Comprehensive Regulation, Including Penalties for the Violation Thereof, and No Room Remains for State Action by Way of Punishment or Otherwise in the Premises.

In 1935 Congress enacted Part II of the Interstate Commerce Act, the pertinent provisions of which are set forth in the Appendix to this brief.

About 1940 the Interstate Commerce Commission, pursuant to the authority conferred upon it in Section 303(b), U. S. C. A., instituted an investigation, Ex Parte No. MC 35, to determine whether or not the exemption of casual,

occasional or reciprocal transportation of passengers or property by motor vehicle or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business should be removed.

On March 21, 1942, the Interstate Commerce Commission duly made and entered its decision and order in Ex Parte No. MC 35, 33 MCC 69, 3 Fed. Carrier Cases 202. The findings of the Commission in this case are set forth at pages 25 and 26 of Petitioner's petition and brief. In the Appendix following this brief will be found pertinent excerpts from the opinion of the Commission in that case.

The Interstate Commerce Commission's decision and order in Ex Parte MC 35, *supra*, had the force and effect of making the transportation of passengers by motor vehicle in interstate commerce for compensation subject to all the provisions of Part II of the Interstate Commerce Act, whenever and wherever such transportation is sold, offered for sale, provided, procured, furnished or arranged for by any person who sells, offers for sale, provides, furnishes, contracts or arranges for transportation and compensation or as a regular occupation or business.

The order removed the exemption theretofore existing and made all provisions of Part II of the Interstate Commerce Act applicable to the furnishing or sale of such transportation as that with which we are here concerned.

People v. Van Horn, 76 Cal. App. 2d 753.

Section 654.1 of the Penal Code of the State of California, the statute here in question, is set forth in full in the Appendix to this brief.

Part II of the Interstate Commerce Act, since the Interstate Commerce Commission made its order in Ex Parte

No. MC 35, punishes as a crime the sale of transportation over a casual motor carrier without a certificate of convenience and necessity or a permit from the Interstate Commerce Commission; Section 654.1 of the California Penal Code attempts to punish as a crime the identical act.

It will thus be observed that the California Statute punishes criminally the very acts punished criminally by the Congressional Act. Petitioner has never contended otherwise.

Petitioner has consistently ignored the well settled principle that once Congress has entered a field of interstate commerce with a comprehensive scheme of regulation, including penalties for the violation thereof, future attempts to legislate upon the same subject are invalid under the Commerce Clause of the United States Constitution.

In *Missouri Pacific v. Porter*, 273 U. S. 341 at 346, this Court said respecting a statute of the State of Arkansas prohibiting limitation of liabilities by railroads, after the enactment by the Congress of the Carmack Amendment:

> "Its (Congress') power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot be applied *in coincidence with*, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." (Italics ours.)

Mr. Justice Holmes felicitously stated the same principle in *Charleston & Western Carolina Ry. Co. v. Varnville*, 237 U. S. 597, respecting the South Carolina Act penalizing the failure of railroads to pay claims promptly, even

though the Carmack Amendment had been enacted by the Congress, at page 604:

> "When Congress has taken the particular subject matter in hand *coincidence* is as ineffective as opposition, and a State law is not declared a help because it attempts to go farther than Congress has seen fit to go. * * * The legislation is not saved by calling it an exercise of the police power. * * *" (Italics ours.)

In *Southern Railway Co. v. Railroad Commission*, 236 U. S. 439, a statute of the State of Indiana penalized as unlawful the failure to secure grab-irons upon railway cars. The Safety Appliance Act, 45 U. S. C. A., Sections 4611 and 4612, imposed penalties likewise for similar omissions. In striking down the State enactment the Court stated at page 448:

> "The test, however, is not whether the State legislature is in conflict with the details of the federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had asserted its exclusive control."

The Congress and the Interstate Commerce Commission in Part II of the Interstate Commerce Act, in Ex Parte No. MC 35, have subjected to a comprehensive scheme of regulation the licensing of sellers of transportation over casual motor carriers, and have required as incident thereto the licensing of such carriers. Appropriate criminal penalties are imposed upon one who sells transportation over an unlicensed casual motor carrier. The California State Statute in question attempts to penalize identically the same thing. It is submitted that under the authorities cited, Section 654.1 of the Penal Code of the State of California is invalid.

III.

The Authorities Cited by Petitioner Do Not Support Its Position.

Petitioner contends in its argument that this Court found in *California v. Thompson*, 313 U. S. 109, that the regulation of the instant matter was one peculiarly for State regulation. The Court made no such finding unless its conclusion that the field was an appropriate one for State regulation in the absence of Federal enactment therein be distorted to that conclusion. This Court in *California v. Thompson, supra*, held that Congress could exclude the State by fully occupying the field of legislation in question, even though in that case this Court correctly held that at the time in question Congress had not fully occupied the field. As previously shown, since the *Thompson* case arose, the Interstate Commerce Commission has extended the application of Part II of the Interstate Commerce Act to the very field here in question, and it follows that the Federal enactment now fully covers the field to the exclusion of the State legislation upon the subject.

Petitioner criticizes the citation by the Appellate Department of the Superior Court of the State of California in its opinion of *State v. Harper*, 48 Mont. 456 (138 Pac. 495), citing in support of its criticism *State v. Reid*, 53 Mont. 292 (163 Pac. 477), and *In re Squires*, 144 Vt. 285 (44 A. 2d 133), and *Hewitt v. State*, 74 Tex. Cr. 46 (167 S. W. 40). The Appellate Department of the Superior Court noted that *State v. Harper, supra*, held invalid a Montana State law substantially like the Mann Act (18 U. S. C. A., Sections 2421-2424), prohibiting the transportation of women into the State for immoral purposes. The Supreme Court of Montana in that case aptly said of the contention that the State police power ought to

extend to the punishment of the same act punished by Congress in the exercise of its power under the Commerce Clause:

> "This might be true in some instances, but here we are confronted with the fact that, so far as the regulation of interstate commerce is concerned, the States have expressly surrendered the entire subject to the general government, and that, when the general government sees fit to exercise the powers delegated and surrendered to it by the States, the State is precluded from saying that the subject, or any matter connected therewith, is under the concurrent control of the two sovereignties."

This answers Petitioner's contention that a State has power to punish where the same act is punishable under Federal Statute enacted pursuant to the Commerce Clause of the Federal Constitution.

It must be noted that the Mann Act punishes only the transportation and acts resulting and causing the actual transportation between states of a woman for immoral purposes. This fact itself distinguishes *Hewitt v. State*, 74 Tex. Cr. R. 46 (167 S. W. 40); *State v. Reid, supra*, and *In re Squires, supra*, each of these punishing not the transportation of women but the inducement of women to travel for immoral purposes. It is clear, as pointed out in *In re Squires, supra*, that had Congress acted under the Commerce Clause to punish the inducing of women to travel in interstate commerce, the State Statute would be of no force or effect and would fall. It follows that these very cases cited by Petitioner stand as authority for the principles enunciated by the Appellate Department of the Superior Court in its opinion in the instant case.

Petitioner cites *Armour & Co. v. North Dakota*, 240 U. S. 510, presumably as offering some support to contentions in the instant case. The *Armour* case actually held nothing more than that a State might prescribe the size of containers for lard moving in intrastate commerce and that Federal enactments under the Commerce Clause did not limit the right of the State so to legislate.

After conceding at page 3 of its petition and brief that the State of California here is attempting to punish the identical act punished by the Federal Government under Part II of the Interstate Commerce Act, petitioner attempts to suggest at page 44 that perhaps Congress has not occupied the field here to the exclusion of the States. It is clear that Congress has occupied this particular segment of the field of regulation of interstate motor carrier transportation. The cases cited by petitioner in support of its last mentioned subject offer petitioner no comfort.

South Carolina State Highway Dept. v. Barnwell Bros., Inc., 303 U. S. 177, simply holds that since the Congress has never prescribed any limitations with respect to the width and weight of motor vehicles moving in interstate commerce, the States may validly enact legislation on the subject.

Maurer v. Hamilton, 309 U. S. 598, holds that since the Congress has not delegated authority to the Interstate Commerce Commission to regulate the mode of construction of motor vehicles moving in interstate commerce in the transportation of automobiles, the State of Pennsylvania might validly legislate concerning the construction of such vehicles.

H. P. Welch Co. v. New Hampshire, 306 U. S. 79, noted that, at the time the controversy arose, the Interstate Commerce Commission had not acted under authority previously given by Congress to regulate the hours of labor of motor carrier drivers and that, until the Interstate Commerce Commission promulgated such regulations (as it subsequently did), the State might validly legislate on the subject.

Nothing in the last three decisions quoted asserts anything other than the fact that at the particular times in question Congress or the Interstate Commerce Commission had not entered a particular segment of the field of interstate commerce and for that reason, and that alone, State statutes were valid.

In *Kelly v. Washington*, 302 U. S. 1, the Court found that the Congress had not legislated respecting the inspection of certain classes of vessels and that the State of Washington might therefore properly do so, saying at page 10: "Congress may circumscribe its regulation and occupy a limited field. When it does so, State regulation outside that limited field and otherwise admissible is not forbidden or displaced." Of course the instant case is not that case.

In *Cloverleaf Co. v. Patterson*, 315 U. S. 148, the question presented was whether State legislation *conflicted* with the Federal enactment. The Alabama Act in question contained provisions authorizing the seizure of certain spoiled butter to be renovated. No such provisions were contained in the Federal Act. Nevertheless the Court found that the State Act did conflict with the Federal Statute relating to renovating butter and held that even though the Federal Statute and State Statute did not cover identical ground, the spirit and intent of the Federal enact-

ment was that the State should not act at all in the field. Respondents do not contend that a State Statute may not be void because of conflict with Federal enactment; they do contend that a State enactment is void when it coincides with a Federal Statute. In the *Cloverleaf* case, *Charleston & Carolina Railway v. Varnville Furniture Co.*, *supra*, is quoted at page 169 of the opinion to the effect that "when Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition * * *." In the *Cloverleaf* case, as here, the State insisted that it was merely cooperating with the Federal Government, which contention this Court found invalid.

In *Bob-Lo Excursion Co. v. Mich.* (decided Feb. 2, 1948), 333 U. S. 28 (Preliminary Print), 92 L. Ed. (Advance Sheets) 339, 68 Sup. Ct. Rep. (Advance Sheets) 358, this Court noted that although the island in question was in Canadian territory, its patronage was derived almost exclusively from the City of Detroit. The instant case does not present one involving transportation between an island in that peculiar relation to an American city; it involves the sale of transportation between California and all points in the United States; specifically, the respondents sold transportation from Los Angeles, California, to Fort Worth, Texas. [R. 16.]

This Court held in the *Bob-Lo* case that an anti-discrimination statute of the State of Michigan might be enforced against a water carrier engaged in transporting passengers between the Canadian island mentioned and Michigan. It noted that the Congress had enacted no legislation in the field and consequently had not entered the field. That case obviously therefore is not the instant case.

In *Hartford Indemnity Co. v. Illinois*, 298 U. S. 115, both the State and Federal Governments required licenses

of commission merchants. The State Act required the merchants to post a bond, a requirement not present in the Federal Act. The Federal Statute by its very terms expressly validated State statutes not inconsistent or repugnant thereto. The bond provision was held to be not inconsistent or repugnant. In the instant case no such saving clause appears in the Federal enactment.

In *Nashville Ch. & St. L. R. Co. v. Ala.*, 128 U. S. 96, the State Statute in question required railway employees to pass a test for color blindness. This Court held the State Statute valid since there had been no Congressional action in the field although this Court noted that Congress' power is plenary.

In *Sou. Pac. Co. v. Ariz.*, 325 U. S. 761, the validity of an Arizona Statute limiting the number of cars for trains was questioned. After stating that at the time the case arose the Interstate Commerce Commission had not acted administratively pursuant to authority theretofore granted by Congress to prescribe the length of trains and that in consequence the Federal Congress had not occupied the field, the Court nevertheless found the statute unconstitutional because it was an unreasonable burden upon interstate commerce and consequently actually violated the Commerce Clause of the Federal Constitution. It is submitted that this is not the instant case, although it illustrates one of the grounds for declaring unconstitutional a State Statute.

Respondents conclude from the foregoing that the Appellate Department of the Superior Court has followed precisely the prevailing rule of decision in this Court.

While *People v. Compagnie Generale Transatlantique*, 107 U. S. 59, involved the regulation of immigration, the

Court, in striking down a New York Statute, commented at page 63 that the Federal law "covers the same ground as the New York Statute and they cannot co-exist."

In *Mo., K. & T. R. Co. v. Harris*, 234 U. S. 412, this Court clearly recognized the familiar principle heretofore discussed and upon which the Appellate Department of the Superior Court based its decision; this Court said at page 417:

> "It is of course settled that when Congress has asserted its paramount legislative authority over a particular subject of interstate commerce, State laws upon the same subject are superseded."

The cases did hold valid a State Statute permitting the recovery of attorney's fees as an incident to the collection of small claims asserted against carriers in interstate commerce. But this was squarely predicated upon the conclusion that Congress had not legislated upon the subject and that therefore the State might properly do so. This Court said at page 422:

> "* * * it (the local statute) deals only with a question of costs, respecting which Congress has not spoken. Until Congress does speak the State may enforce it in such a case as the present."

As noted hereinbefore, *Charleston & Carolina R. Co. v. Varnville Co.*, 237 U. S. 597, and *Missouri Pac. v. Porter*, 273 U. S. 341, both held that coincidence between State and Federal Statutes enacted under the commerce power is as fatal as conflict.

In discussing *Ore. Wash. RR. & Nav. Co. v. Washington*, 270 U. S. 87, Petitioner reasserts its persistent contention that only conflict with Federal enactment may in-

validate a State Statute. The case actually turned on this Court's conclusion that the Federal Quarantine Acts fully occupied the field and that it followed (page 102) "* * * when Congress has acted and occupied the field as it has here, the power of States to act is prevented or suspended."

Northern Pac. R.R. Co. v. Washington, 222 U. S. 370, is not overruled by *Welch Co. v. New Hampshire*, 306 U. S. 79, even by implication. In the *Northern Pacific* case the Court found that it was Congress' intent to occupy the field fully even prior to the effective date of its legislation; the *Welch* case, as previously noted, held simply that until Federal regulation entered the field, the State legislation was valid.

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148, has been previously discussed as has *Southern R. Co. v. Railroad Commission*, 236 U. S. 439.

Bethlehem Steel Co. v. N. Y. Labor Relations Board, 330 U. S. 767, was unquestionably cited by the Appellate Department of the Superior Court for the general principle that when Congressional legislation had occupied a given field, no room remained for State enactment upon the same subject.

It seems clear from the foregoing that the decisions of this Court upon which the Appellate Department of the Superior Court predicated its decision accord with the result reached by the Appellate Department.

So far as research on the part of counsel for respondents discloses, the cases of this Court holding valid State legislation as having merely an incidental effect upon interstate commerce are uniformly cases where the Congress has not legislated comprehensively upon a particular segment of interstate commerce, and for that reason the States may

validly legislate in the absence of some serious burden upon interstate commerce directly contravening the Commerce Clause of the United States Constitution itself.

The cases cited by Petitioner do not alter this conclusion.

California v. Thompson, 313 U. S. 109, has been shown to involve a situation where Congress had not entered the field.

Lake Shore & M. C. R. Co. v. Ohio, 173 U. S. 285, held that a State may validly enact legislation compelling railroad trains to stop in certain towns under certain conditions in the absence of Congressional action on the subject.

Boston & M. R. Co. v. Amburg, 285 U. S. 234, held that the Massachusetts Workmen's Compensation Act applied by its terms only to intrastate commerce, and that in consequence it was not superseded by the Federal Employers Liability Act.

Louisville & N. R. Co. v. Kentucky, 183 U. S. 503, involved a Kentucky Statute penalizing the collection of greater rates for a shorter haul; this Court held that the statute in question was applicable only to intrastate commerce.

This Court held in *Crossman v. Lurman*, 192 U. S. 189, that the State of New York might validly condemn adulterated coffee beans imported into that State, since the Congressional Act on the subject did not embrace the particular field.

In *Austin v. Tennessee*, 179 U. S. 343, an anti-cigarette statute of a State was held valid, since under the facts the cigarettes had come to rest within the State, and were no longer in interstate commerce, this Court striking down an attempt to invoke the original package doctrine by shipping the cigarettes in boxes containing ten cigarettes each.

In *Panhandle E. Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507 (Preliminary Print), the Congressional Statute in question expressly excluded from its operation the field in which the State legislation operated.

In *Fox v. Ohio*, 46 U. S. 410, it was held that the State might punish the uttering of counterfeit money; it was noted that the Congressional Act did not punish such uttering. In *U. S. v. Marigold*, 50 U. S. 560, this Court held that the Congressional power extended under the Money Clause of the Constitution to punishing the uttering of counterfeit money.

It was noted in *In re Siebold*, 100 U. S. 371, that State regulation of the election of United States representatives and senators was proper, although it was noted that Congress' power in the premises was paramount when, as and if it acted and that any Congressional legislation on the subject would supersede State legislation.

Cross v. North Carolina, 132 U. S. 131, was expressly distinguished in *Southern R. Co. v. Railroad Commission*, 236 U. S. 439, at page 445, where this Court said:

> "In support of this position numerous cases are cited which, like *Cross v. North Carolina*, 132 U. S. 131, hold that the same act may constitute a criminal offense against two sovereignties, and that punishment by one does not prevent punishment by the other. That doctrine is thoroughly established. But, upon an analysis of the principle on which it is founded, it will be found to relate only to cases where the act sought to be punished is one over which both sovereignties have jurisdiction. This concurrent jurisdiction may be either because the nature of the act is such that at the same time it produces effects respec-

tirely within the sphere of state and Federal regulation and thus violates the laws of both; or, where there is this double effect in a matter of which one can exercise control but an authoritive declaration that the paramount jurisdiction of one shall not exclude that of the other. . . ."

The Court then said at page 446:

"But the principle that the offender may, for one act, be prosecuted in two jurisdiction, has no application where one of the governments has exclusive jurisdiction of the subject-matter, and therefore the exclusive power to punish. Such is the case here where Congress, in the exercise of its power to regulate interstate commerce, has legislated as to the appliances with which certain instrumentalities of that commerce must be furnished in order to secure the safety of employees. Until Congress entered that field, the states could legislate as to equipment in such manner as to incidentally affect, without burdening, interstate commerce. But Congress could pass the Safety Appliance Act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the constitution the nature of that power is such that, when exercised, it is exclusive, and *ipso facto* supersedes existing state legislation on the same subject."

U. S. v. Lanza, 250 U. S. 377, held that both the State and Federal Governments could punish persons for dealing in liquor. The Eighteenth Amendment, of course, gave the State and the Federal Governments concurrent power to punish.

The plain fact is that Congressional power to legislate comprehensively on any field of interstate commerce and

to prescribe appropriate sanctions in connection therewith is paramount; when Congress so acts, a State cannot validly legislate in the same field.

Ziffrin v. Reeves, 308 U. S. 132, found valid State Legislation restricting the transportation of liquor in Kentucky to common carriers by motor vehicle. The decision was predicated upon the fact that the Twenty-first Amendment permits State regulation of liquor traffic without regard to the Commerce Clause.

IV.

Conclusion.

Congress has fully occupied the field, including in its legislation appropriate punishments in the Federal Courts for the very offense here made punishable in the State Courts of California. It is submitted under the Commerce Clause the State Statute is valid; that the Appellate Department of the Superior Court correctly decided the case, and that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX TO RESPONDENTS' BRIEF.

Relevant portions of Part II of the Interstate Commerce Act (numbering of sections is from 49 U. S. Code Annotated and the italics are ours):

"The provisions of this Part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce *and to the procurement of* and the provision of facilities for such transportation, and the regulation of such transportation, *and of the procurement thereof*, and the provision of facilities therefor is hereby vested in the Interstate Commerce Commission." (Sec. 302(a).)

"Nothing in this part, * * * shall be construed to include * * * (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, * * * apply to: * * *; or (9) the casual, occasional or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by broker, or by any other person who sells or offers for sale transportation furnished by persons lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such a certificate or permit." (Sec. 303(b).)

"The term 'interstate commerce' means commerce between any place in a state and any place in another state * * *." (Sec. 303(a)(10).)

"The term 'Commission' means the Interstate Commerce Commission." (Sec. 303(a)(3).)

"The term 'motor carrier' includes both a common carrier by motor vehicle and a contract carrier by motor vehicle." (Sec. 303(a)(16).)

"The term 'broker' means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this part, or negotiates for or holds himself or itself out by solicitation, advertisements or otherwise, as one who sells, provides, furnishes, contracts or arranges for such transportation." (Sec. 303(a)(18).)

"No person shall for compensation, sell or offer for sale transportation *subject to this part* or shall make any contract, agreement or arrangement to provide, procure, furnish or arrange for such transportation, or shall hold himself or itself out by advertisements, solicitation or otherwise, as one who sells, provides, procures, contracts or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: * * *. In the execution of any contract, agreement or arrangement to sell, provide, procure, furnish or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this part: * * *." (Sec. 311(a).)

"Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement or order thereunder, * * *, for which a penalty is not otherwise herein provided, shall upon conviction thereof, be fined not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense." (Sec. 322(a).)

"If any * * * broker operates in violation of any provision of this part * * *, or any rule, regulation, requirement or order thereunder * * *, the Commission or its duly authorized agent may apply to the District Court of the United States for any district where such * * * broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such * * * broker, his or its officers, agents, employees and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term or condition, and enjoining upon it or them obedience thereto." (Sec. 322(b).)

Excerpt from Ex Parte No. MC 35, 3 Federal Carrier Cases 202:

"Since prior to the passage of Part II of the Act, persons have been traveling between points in the United States under the so-called 'share expense' arrangements in automobiles operated by persons not authorized either by the Commission or State regulatory bodies to transport passengers as motor common or contract carriers. The 'share expense' plan purports to be an arrangement whereby an automobile

operator traveling primarily for some purpose other than that of transporting passengers for compensation, carries passengers who share with him the expense of operation of the vehicle used. Such operators ostensibly engage in such transportation only casually or occasionally or under reciprocal arrangements. In connection with this type of travel, there has developed a business known as that of a travel bureau. Numerous individuals or partnerships operating under trade names, usually including the words 'Travel Bureau,' are engaged in this business whereby, for compensation, they bring together such automobile operators and prospective passengers and arrange, or enable such operators and passengers to arrange for travel in this manner. For this service fees or commissions are collected from either the automobile operator or the passenger, and in some cases from both.

"* * * The travel bureau business is quite extensive in many cities, particularly, those in the western and southwestern states, notably at Kansas City, Mo., Wichita, Kans., Oklahoma City and Tulsa, Okla., Dallas, Ft. Worth, San Antonio, Houston and El Paso, Tex., Los Angeles and San Francisco, Calif., Portland, Oreg., Seattle, Wash., and Denver, Colo.

* * *

"The Commission, Division 5, has held in several proceedings that the partial exemption in Section 203(b)(9) of the act of the casual, occasional and reciprocal transportation of passengers not performed as a regular business has the effect of exempting from all provisions of the act those who make a busi-

ness of arranging this type of transportation exclusively, and has denied licenses as brokers to applicants seeking authority to arrange for such transportation.

"* * * Under the present exemption, the Commission cannot fully regulate such transportation to the end that travelers are adequately protected or require travel bureaus arranging such transportation to provide financial responsibility by filing a bond or other security such as required from brokers arranging for transportation by motor carriers operating under certificates or permits. * * * We find that in order to carry out the national transportation policy declared in the act, the exemption of casual, occasional or reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in Section 203(b)(9) of the act should be removed to the extent necessary so as to make applicable all provisions of the Act to such transportation when sold, offered for sale, provided, procured, furnished or arranged for by any person who sells, offers for sale, provides, furnishes, contracts or arranges for such transportation for compensation or as a regular occupation or business."

Section 654.1 of the California Penal Code provides:

"It shall be unlawful for any person, acting individually or as an officer or employee of a corporation, or as a member of a copartnership or as a commission agent or employee of another person, firm, or corporation, to sell or offer for sale, or to negotiate, provide or arrange for, or to advertise or hold himself out as

one who sells or offers for sale or negotiates, provides or arranges for transportation of a person or persons on an individual fare basis over the public highways of the State of California unless such transportation is to be furnished or provided solely by, and such sale is authorized by, a carrier having a valid and existing certificate of convenience and necessity, or other valid and existing permit from the Public Utilities Commission of the State of California, or from the Interstate Commerce Commission of the United States, authorizing the holder of such certificate or permit to provide such transportation."

Service of the within and receipt of a copy thereof is hereby admitted this.....day of November, A. D. 1948.

11-9-48—60